

July 18, 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *July 2, 2003, "Reply" of the Office of the Governor of the Commonwealth of the Northern Mariana Islands to Joint Opposition of Pacific Telecom Inc and Bell Atlantic New Zealand Holdings, Inc., IB Docket No 03-115*

Dear Ms. Dortch:

This letter is submitted on behalf of Pacific Telecom Inc. ("Pacific Telecom" or "PTI") and Bell Atlantic New Zealand Holdings, Inc. ("BANZHI") (collectively, the "Joint Applicants") in response to the unauthorized "reply" dated July 2, 2003, filed on behalf of the Office of the Governor of the Commonwealth of the Northern Mariana Islands ("Office of the CNMI Governor").¹

A. The Office of The CNMI Governor Has Not Met Its Burden For A Hearing

The Office of the CNMI Governor asks the Commission to:

recognize that the Communications Act of 1934, as amended, states that a proceeding involving a certificate under Section 214 will be designated for hearing at the request of a Governor. Thus, a hearing should be granted as a matter of right in this proceeding in the event that PTI/BANZHI's applications are not denied. *See* 47 U.S.C. § 214(b). *See also* 47 C.F.R. § 1.764(b).²

¹ The FCC public notice establishing the procedural schedule in IB Docket No. 03-115, DA 03-1532 (May 9, 2003), did not authorize a "reply" by those who filed petitions to deny.

² CNMI Governor's July 2, 2003, letter at 2 (citation not relevant to FCC hearing issue omitted).

For the Secretary _____
S. J. E. _____

The statute and regulation cited by the Office of the CNMI Governor do not support his legal arguments. First, although Section 214(b) requires the Commission to notify the Governor of a State concerning a 214 application affecting the State, the statute provides only “the right to those notified to be heard.” The Office of the Governor has exercised its right to be heard by filing a petition to deny and its unauthorized reply. The language of Section 214(b) clearly does not require the Commission to designate a hearing solely at the request of a Governor.

Section 1.764(b) does authorize a hearing to be held upon the request of a governor, but only concerning applications filed “under this section,” that is, applications under Section 1.764(a) that seek authority under Section 214 of the Act “to discontinue, reduce, or impair service to a community or part of a community.” No Section 214 discontinuance application triggering Section 1.764 has been filed. Indeed, the Joint Applicants clearly stated in their Section 214 transfer of control application that the proposed “transaction will not . . . reduce existing services.”³ The Office of the CNMI Governor’s citation of Section 1.764(b) in support of its claimed “right” to a hearing, therefore, is groundless.

The Office of the CNMI Governor further claims that its petition “raises numerous substantial and material questions of fact” and makes a *prima facie* showing that grant of the underlying transfer of control applications would be inconsistent with the public interest.⁴ None of the issues raised by the Governor, especially when viewed against the opposing evidence submitted by the Joint Applicants, satisfies his burden of proof to raise a substantial and material question of fact that would warrant denial of the transfer or designation for hearing.⁵

³ *Joint Application for Transfer of Control of Domestic 214 Authority*, April 18, 2003, at 8.

⁴ CNMI Governor’s July 2, 2003, letter at 1. The CNMI’s leading newspaper, *The Marianas Variety* (which has absolutely no affiliation with Pacific Telecom or its owners), questions the Office of the CNMI Governor’s view of the public interest and enthusiastically supports the proposed foreign investment in MTC by Pacific Telecom, because the “[t]he CNMI needs new investments [and] PTI is a new investor with a reputable and proven track record.” The editorial questions “what new major investment in the CNMI will not be foreign” and concludes that Pacific Telecom’s purchase “is expected to lead to significant improvements in telecommunications technology and services available to CNMI customers.” The June 27, 2003, editorial is appended as Attachment A.

⁵ Under Section 309(d), the burden of both presenting a *prima facie* case and demonstrating the existence of a substantial and material question of fact is borne by the petitioner. *Application of Choctaw Broadcasting Corporation (Assignor) and New South Communications, Inc. (Assignee)*, 12 FCC Rcd 8534, 8538 (1997). The affidavit submitted by the Office of the CNMI Governor that includes only general allegations on information

B. Alleged Misrepresentations

The Office of the CNMI Governor strains to blame the current 100 percent owners of Pacific Telecom (Ricardo C. Delgado and his son Jose Ricardo Delgado) for the alleged misrepresentations made in a previous proceeding by a former Pacific Telecom shareholder and its employee who no longer have anything to do with the company. The Joint Applicants clearly stated that they “had no knowledge that an affiliate of Tan [the former shareholder] in an unrelated business had a *nolo contendere* plea more than eleven years ago and had failed to disclose it on the FCC application forms that Tan had primary responsibility for completing.”⁶ In the absence of specific and concrete evidence refuting this statement or a *prima facie* demonstration that the Delgados had an intent to mislead the Commission, the allegations imputing past alleged misrepresentations of another party to the new 100 percent owners of Pacific Telecom are meritless.⁷

and belief is plainly insufficient to trigger a hearing under Section 309(d) of the Act. *See North Idaho Broadcasting Company*, 8 FCC Rcd 1637, 1638 (1993).

⁶ *Joint Opposition To Petition To Deny And Comments*, IB Docket No. 03-115, June 24, 2003, at 12.

⁷ *Weyburn Broadcasting Ltd. Partnership v. FCC*, 984 F. 2d 1220, 1232 (D.C. Cir. 1993) (“intent to deceive [is] an essential element of misrepresentation.”). *See also Secret Communications II, LLC (Assignor) and Clear Channel Broadcasting Licenses, Inc. (Assignee)*, 18 FCC Rcd 9139, 9151 and n. 63 (2003), *citing, inter alia, Garret, Andrews & Letizen, Inc and Ferraro and Ferraro*, 86 FCC 2d 1172, 1180 (Rev. Bd. 1981), *mod on other grounds*, 88 FCC 2d 620 (1981) (burden on petitioner to demonstrate motive to deceive or conceal because Commission will not infer improper motive from speculation that lacks factual support).

Ms. Marlene H. Dortch
July 18, 2003
Page 4

Please contact the Joint Applicants' undersigned attorneys if you have any questions.

Sincerely submitted,

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cc: Attached Service List

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ATTACHMENT A

Marianas Variety

Marianas's Leading Newspaper Since 1972

www.mvariety.com
Serving the CNMI for 31 years

Friday, June 27, 2003

How NOT to attract foreign investors (2)

THB administration, which says that it is trying to woo foreign investors, should not oppose PTI's purchase of Verizon on the grounds that the investor in question is foreign — particularly when the governor and the U.S. government are pushing for the privatization of CUC's power division which, we were told, is likely to be awarded to their favored contractor, who is as local as lunch and Ginebra San Miguel.

Here's a question to local leaders: Besides the proposed OTBC facility, what new major investment in the CNMI will not be foreign?

We believe, in any case, that the governor's concerns regarding PTI were already addressed by the withdrawal of Tam Holdings from the consortium. Hence, PTI should not be considered "guilty" by association, and the governor should have accepted the invitation to inspect the company's facilities before filing his comments with the FCC.

The CNMI needs new investments. PTI is a new investor with a reputable and proven track record. Moreover, PTI actually wants to bring in millions of dollars into this cash-starved commonwealth. It is more than willing to comply with all applicable local AND federal rules and regulations. Its purchase of the local Verizon franchise is expected to lead to significant improvements in telecommunications technology and services available to CNMI customers. PTI, in addition, intends to make its resident workers part of the new company.

CNMI officials jockey every now and then to "hire investors." Here is a company that wants to invest in the CNMI whose officials, in turn, have done nothing but to block it. And then they all wonder why no one else wants to invest in the commonwealth.

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CERTIFICATE OF SERVICE

I, Felicia Lane, a legal secretary at Wilkinson Barker Knauer, LLP certify that on July 18, 2003, the foregoing was served on all parties listed below by hand delivery (indicated by asterisk) and US. mail, first class, postage prepaid.

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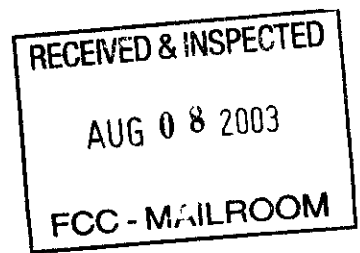
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Re: CC Docket No. 94-104

Interim Report

In regard to the E911 Phase I and Phase II deployment, Mohave Cellular Limited Partnership (MCLP), dba Citizens Mohave Cellular and Mohave Wireless, located in Kingman, Mohave County, Arizona reports as follows:

1. MCLP previously filed an E911 Implementation Report on November 9, 2000.
2. MCLP has four separate Public Safety Answering Point ("PSAP") jurisdictions in the MCLP service area and has not received a request from a PSAP to deploy E911 Phase I or Phase II.
3. MCLP has not deployed either Phase I or Phase II
4. MCLP has chosen network-based Phase II technology and utilizes analog and digital (TDMA) technology.
 - a. MCLP's Nortel switch has all available software installed to support E911. The Arizona State Government will establish the timeline for PSAP integration.
 - b. MCLP is not pursuing a handset-based solution.
 - c. MCLP has not encountered any obstacles in seeking to deploy Phase II.
5. The State of Arizona does provide funding for Phase II E911. The cost has yet to be determined so it is not known if the funding will cover all or only part of MCLP's costs.
6. It is estimated that Phase II service will be available in MCLP's network by September, 2005, and that MCLP is on schedule to meet the ultimate implementation date of December 31, 2005.

If you have any questions concerning the foregoing, please do not hesitate to contact Don Schulster at (928) 681-0334.

DVS/dp

A handwritten signature, possibly "DVS", followed by a date "8/13/03" and a horizontal line.

Re: CC Docket NO. 94-102

STATE OF ARIZONA)
) ss.
County of Mohave)

I, Donald V. Schulster, being duly sworn under oath depose and say as follows:

1. My name is Donald V. Schulster and I am the Networks Operation Manager of Mohave Cellular Limited Partnership.
2. As the Networks Operations Manager I have been the primary party responsible for the implementation of the E911 technology and implementation for Mohave Cellular Limited Partnership.
3. The foregoing information contained in the Interim Report dated July 31, 2003, is true and accurate to the best of my personal knowledge and belief.

Further Affiant sayeth naught.

DATED this 31st day of July, 2003.

Donald V. Schulster
DONALD V. SEHULSTER

SUBSCRIBED AND SWORN to me this 31st day of July, 2003, by DONALD V SEHULSTER.

Donna G. Pederson
Notary Public

My Commission Expires:

